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The Commonwealth of Massachusetts
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Fire Safety Commission

Automatic Sprinkler Appeals Board

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CHAIRMAN

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VICE CHAIR

Docket # 2005-36
455 Oak Street
Brockton, MA

AUTOMATIC SPRINKLER APPEALS BOARD
DECISION AND ORDER

A) Statutory and Regulatory Framework

This is an administrative appeal held in accordance with Massachusetts General Laws Chapter 30A; Chapter 148, section 26G½ and Chapter 6, section 201, relative to a determination of the Brockton Fire Department, requiring the installation of an adequate system of automatic sprinklers in a building owned and/or operated by the Fuller Craft Museum (hereinafter referred to as the Appellant). The building, which is the subject of the order, is located at 455 Oak Street, Brockton, MA.

B) Procedural History

By written notice received by the Appellant on April 1, 2005, the City of Brockton Fire Department issued an Order of Notice to the Appellant informing it of the provisions of M.G.L c. 148, s.26G½, which requires the installation of an adequate system of automatic sprinklers in certain existing buildings or structures. The building subject to the order is located at 455 Oak Street, Brockton, MA. The Appellant filed an appeal of said order on May 13, 2005. The Board held a hearing relative to this appeal on December 14, 2005, at the Department of Fire Services, Stow, Massachusetts.

Appearing on behalf of the Appellant was: Norton Remmer, Consultant, Kevin Fachetti, Facility Manager, Susan Hammond, CFO, and Paul N. Abbott, Museum Board Member. Fire Inspector Lt. Edward J. Williams represented the Brockton Fire Department.

Present for the Board were: Maurice M. Pilette, Chairperson, Paul Donga, Vice Chair, Stephen D. Coan, State Fire Marshal, Alexander MacLeod, Chief Thomas Coulombe, and Peter Gibbons. Peter A. Senopoulos, Esquire, was the Attorney for the Board.

Following a continuation of the first hearing, the Board held a second hearing relative to this appeal on April 13, 2006, at the Department of Fire Services, Stow, Massachusetts.

Appearing on behalf of the Appellant was: Norton Remmer, Consultant, Kevin Fachetti, Facility Manager, and Susan Hammond, CFO. Fire Inspector Lt. Edward J. Williams represented the Brockton Fire Department.

Present for the Board were: Maurice M. Pilette, Chairperson, Paul Donga, Vice Chair, Alexander MacLeod, and Chief Thomas Coulombe. Peter A. Senopoulos, Esquire, was the Attorney for the Board.

C) Issue(s) to be Decided

Whether the Board should affirm, reverse or modify the enforcement action of the Brockton Fire Department relative to the subject building in accordance with the provisions of M.G.L. c.148, s. 26G½ ?

D) Evidence Received

1. Application for appeal submitted by Appellant
2. Written Statement in Support of Application for Appeal
3. Order of Notice of Brockton Fire Department
4. 1st Notice of Hearing to Appellant
5. 1st Notice of Hearing to Brockton Fire Dept.
6. Certificate of Inspection (Exp. 10/1/2006)
7. Exhibit Package Submitted by Appellant
8. Plot Plan #2
9. 2nd Notice of Hearing to Appellant
10. 2nd Notice of Hearing to Brockton Fire Department
11. 3rd Notice of Hearing to Appellant
12. 3rd Notice of Hearing to Brockton Fire Department
13. Certificate of Inspection
14. Sprinkler Estimate
15. Rental Agreement
16. Floor Plan

E) Subsidiary Findings of Fact

- 1) By notice received by the Appellant on April 1, 2005, the Brockton Fire Department issued an Order of Notice to the Appellant requiring the installation of an adequate system of automatic sprinklers in a building located at 455 Oak Street, Brockton, MA in accordance with the provisions of M.G.L. c. 148, s.26G1/2.
- 2) The appellant, The Fuller Craft Museum, operates a museum facility that is approximately 21,800 square feet made of wood frame construction. The museum has several art gallery rooms, a small café, function room, and an attached, but separate, storage area made from concrete and steel.

- 3) The Certificate of Inspection issued for this facility by the City of Brockton Building Department on December 22, 2005, indicates an “A-3” use group classification. The certificate indicates that the occupancy for the art gallery is 62 persons, the coffee shop is 82 persons, and the “auditorium” has a capacity of 175 persons, for a total of 317 persons throughout the facility. The “auditorium” area, as referenced in the most recent Certificate of Inspection, is also used for a variety of social and banquet type functions. The auditorium or function area is approximately 37’ wide and 56’ long and has a floor area of approximately 2,072 s.f.
- 4) The representatives of the Appellant indicate that the majority of portions of the museum are used for museum gallery art display and activities principally related thereto. However, the portion of the building referred to as the auditorium or function room is rented out approximately 30 times a year for certain social events such as weddings, wedding showers, christenings, banquets, and cocktail receptions. The Appellant further indicated that for nearly all of the rental functions, a full meal is served.
- 5) The facility rental agreement indicates that the gallery/ballroom are the only rental spaces on site. The agreement also indicates that the gallery/ballroom can hold 175 persons for a lecture or standing cocktail reception; 132 persons for seated & served dinners, or 100 for a seated buffet.
- 6) The representatives for the Appellant testified that during rental events in the gallery/ballroom (listed as “auditorium” on Certificate of Inspection), lighting levels are fixed between 12-25 lumens, which is same level of lighting as on the artwork. The Appellant also indicated that the facility closes functions at 12:00 a.m., and that attendance for events is by invitation and not by ticket sales at the door.
- 7) The Appellants further testified that during some events, live music from a DJ is allowed and that a DJ would set up on the small stage inside the gallery/ballroom area. Furthermore, there is always security on site during events and that all bartenders are “TIPs” certified.
- 8) The museum operates Monday through Friday and on weekends. The museum café is open daily from 11:00 a.m. to 2:00 p.m. During special events, hours of operation may be extended until 12:00 a.m., but no later. The Appellant noted that the facility has an entertainment/amusement license as well as a full service liquor license and that a 2 a.m. closing is marked on the liquor license.
- 9) In support of the Brockton Fire Department’s position, Lt. Williams testified that the facility has a full entertainment and full liquor license. (Lt. Williams also indicated that a full fire alarm system is currently being installed throughout the museum.)

F) Ultimate Findings of Fact and Conclusions of Law

- 1) The provisions of the 2nd paragraph of M.G.L. c. 148, s. 26G1/2, in pertinent part states: “ every building or structure, or portions thereof, of public assembly with a capacity of 100 persons or more, that is designed or used for occupancy as a night club, dance hall, discotheque, bar, or similar entertainment purposes...(a) which is existing or (b) for which an approved building permit was issued before December 1, 2004, shall be protected throughout with an adequate

system of automatic sprinklers in accordance with the state building code”. The law was effective as of November 15, 2004.

- 2) The statutory timeline for said sprinkler installation in accordance with the provisions of section 11, St. 2004, c.304, requires the submission of plans and specifications for the installation of sprinklers within 18 months of the effective date of the act (by May 15, 2006) and complete installation within 3 years of the effective date of the act (by November 15, 2007).
- 3) In a memorandum dated 1-10-05, this Board issued an interpretive guidance document relative to the provisions of this new law found in c.148, s.26G1/2. This new law was a portion of a comprehensive legislative initiative undertaken as the result of a tragic Rhode Island nightclub fire, which took place in February 2003. In said memorandum, this Board acknowledged that the statute did not contain a definition of the words “nightclub, dance hall, discotheque, bar or similar entertainment purposes.” However, the board noted that the terms “nightclub” and “dance hall” are used within the A-2 use group classification found in the 6th Edition of the Massachusetts Building Code, 780 CMR 303.3. This use group definition was drafted from nationally recognized model building code language. The commentary documents relating to the A-2 use group definitions used in the nationally recognized model code, indicates that such classification includes occupancies in which people congregate in high densities for social entertainment purposes. Examples given in the commentary are: dancehalls, nightclubs, cabarets, beer gardens, drinking establishments, discotheques and other similar facilities. The commentary concluded that the uniqueness of these occupancies is characterized, but not limited to, by the following factors:
 - a) No theatrical stage accessories other than raised platform;
 - b) Low lighting levels;
 - c) Entertainment by a live band or recorded music generating above-normal sound levels;
 - d) Later-than-average operating hours;
 - e) Tables and seating arranged or positioned so as to create ill defined aisles;
 - f) A specific area designated for dancing;
 - g) Service facilities primarily for alcoholic beverages with limited food service; and
 - h) High occupant load density.

It was the interpretation of this board that such characteristics are typical of the “A-2 like” occupancy (which was a general reference to the A-2 use group referenced in 780 CMR, The State Building Code) and that these are the type of factors that heads of fire departments should consider in enforcing the sprinkler mandates of M.G.L. c.148, s.26G1/2. It was noted that the list of characteristics was not necessarily all-inclusive. Additionally, the factors may be applied individually or in combination depending upon the unique characteristics of the building at the discretion of the head of the fire department.

- 4) In accordance with the City’s Certificate of Inspection and based upon a description of activities which occur within this facility, this building is a place of assembly with a capacity of 100 persons or more, used for a wide variety of different uses relating to the educational, cultural and social purposes of the museum. Except for the auditorium/function area, the other areas of this building are not currently used or designed for any use within the scope of the sprinkler requirements of

M.G.L. c. 148, s.26G1/2. The auditorium also known as the function hall portion of this establishment, in particular, is regularly and routinely used and rented out for a variety of social activities such as weddings, bridal showers, christenings, banquets, and cocktail receptions which feature recorded or live music for dancing purposes. However, according to testimony, most of these events appear to be privately organized dining events that feature a meal as the main attraction.

- 5) Notwithstanding the incidental appearance of live or recorded music for dancing purposes, this board has concluded in prior decisions that under certain circumstances, a portion of a place of assembly which provides facilities for organized private dining events may not necessarily be subject to the retroactive sprinkler installation requirements of M.G.L. c.148, s.26G1/2. The existence of the certain characteristics of such dining events is distinguishable from the “A-2 like” characteristics that this Board concluded were typical of nightclubs, dancehalls and discotheques and within the legislative intent of this law. The characteristics, are as follows:
1. The facility is used for events that feature a meal as the primary attraction.
 2. The facility is used for events that are organized for the purpose of a private function. Attendance for each specific event is limited and pre-arranged between the facility operator and the private event organizers. The number of guests is limited by written invitation or limited ticket availability and does not exceed the agreed upon attendance limit.
 3. Each event has a definite starting and ending time.
 4. Tables and chairs are arranged in well-defined aisles in such a manner to not impede easy egress, and
 5. There are no significantly low lighting levels, and
 6. The maximum documented legal capacity, based upon the available floor space, is not less than 15 feet (net) per occupant. The Board notes that this formula is consistent with the definition of the “unconcentrated” assembly occupancy found in 780 CMR, The State Building Code (6th Edition), table: 780 CMR 1008.1.2.
 7. The characteristics of the event, as referenced above, are strictly controlled by an on-site manager and are made part of a written function event contract.

Examples of organized private dining events may include organized banquets, private parties, fundraisers, wedding receptions and ceremonial banquet events, as long as all the aforementioned characteristics exist. This determination does not preclude such a facility from ever hosting an event that features music by a live band or recording, dancing or similar entertainment as the main attraction. Under the provisions of M.G.L. c.148, s.26G1/2, 4th paragraph, such a facility may be used as a nightclub, dance hall, discotheque or similar entertainment purposes on a temporary basis without the need to install an adequate system of automatic sprinklers under said section. However, such temporary use is allowed only if a permit is issued for such use by the head of the fire department in consultation with the local building inspector. The issuance of such a permit is

a matter within the sole discretion of the head of the fire department who may set the terms and conditions to protect against fire and preserve public safety.

- 6) The board concludes that the social events within the auditorium/function hall that feature many “A-2 like” activities, are also considered “privately organized dining events” which feature a meal as the primary attraction. The board has determined that such activities are not the type of use, which triggers the required system as long as the seven (7) characteristics listed in paragraph F(5) are met. However, based upon the current maximum documented legal capacity (175 persons) and the available floor space of the auditorium/function hall, the Appellant cannot establish that the room is an “unconcentrated” assembly occupancy which allows, at a minimum, 15 s.f. net per occupant.
- 7) At the hearing, the representatives of the Appellant indicated that they were in the process of requesting a revised occupancy capacity for the subject auditorium/function hall with the City Building department. They indicated that they are seeking to re-establish the occupant capacity to 138 persons for said area. It appears that this reduction in occupancy will result in the creation of an “unconcentrated” occupant load, as described herein. However, until this reduction process is legally completed, this Board cannot make a finding that the sprinkler requirement is not required based upon the “privately organized dining event” reasoning.

G) Decision and Order

Based upon the aforementioned findings and reasoning, the Board hereby **modifies** the Order of the Brockton Fire Department to install sprinkler protection in the subject building in accordance with the provisions of M.G.L. c.148, s.26G1/2. The Appellant is required to install an “adequate system of automatic sprinklers,” as defined in said s.26G1/2, only in that portion of the Building referred to as the auditorium/function hall based upon the current posted occupancy of 175 persons. If the occupancy for said portion is legally reduced to the unconcentrated occupancy of 138 persons or less (for function events) by the City Building Department with the concurrence of the Fire Department, the appellant is not be required to install the required sprinkler system in said portion as long as all seven conditions stated in paragraph F(5) are met and documented with the head of the Brockton Fire Department. An adequate system of automatic sprinklers pursuant to s. 26G½ is not required in other portions of this building based upon the current use as described at the hearing. The timeline for the submission of plans and the installation of the sprinkler system shall be in accordance with the provisions of s. 11 of chapter 304 of the Acts of 2004 (attached hereto) or as otherwise directed by the Fire Department.

H) Vote of the Board

Maurice Pilette, (Chairperson)
Paul Donga (Vice Chair)

In favor
In favor

Alexander MacLeod
Thomas Coulombe

In favor
In favor

I) Right of Appeal

You are hereby advised that you have the right, pursuant to section 14 of chapter 30A of the General Laws, to appeal this decision, in whole or in part, within thirty (30) days from the date of receipt of this order.

SO ORDERED,



Maurice Pilette, P.E. Chairman

Dated: June 6, 2006

A COPY OF THIS DECISION AND ORDER WAS FORWARDED BY CERTIFIED MAIL, RETURN RECEIPT TO: Kevin Fachetti, Facility Manager, Fuller Craft Museum, 455 Oak Street, Brockton, Massachusetts 02301 **and 1st Class Mail, Postage Pre-paid to:** Inspector Edward J. Williams, Brockton Fire Department, 42 Pleasant Street, Brockton, Massachusetts 02301.